Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

INITIAL COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits this response[1] to the Notice of Proposed Rulemaking ("*Notice*" or "*Triennial Review*") issued by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceedings.[2] Because of the critical impact action in this proceeding will have on existing State commission policy initiatives, NARUC respectfully reiterates its December 5, 2001 request that the FCC immediately convene a § 410(b) Federal-State Joint Conference to

---

1 NARUC is already on record with respect to many of the issues raised in the *Notice*. See, December 5, 2001 Letters to FCC Commissioners Powell, Martin, Abernathy, and Copps from NARUC Telecommunications Committee Chair Oregon Commissioner Joan Smith, Vice Chair New York Commissioner Thomas Dunleavy, and Vice Chair Michigan Commissioner Robert Nelson filed to support aspects of a November 26, 2001 Petition filed by the Competitive Telecommunications Association in the proceeding captioned *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 ("*NARUC December Letter*"). See also, NARUC's November 2001 and February 2002 Resolutions attached to these comments as Appendix A.

2 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001) ("*Notice*").

facilitate, inform and coordinate its implementation of the three-year UNE review. NARUC also takes the following positions:

(1) *A Joint Conference is in the Public Interest:* Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, *at a minimum*, the FCC should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory "necessary" and "impair" standards.

(2) *State Authority To Add New UNEs/Obligations:* NARUC agrees with the FCC findings that § 251(d)(3) of the 1996 Act "grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251." We believe Congressional intent as outlined in the 1996 federal statute, existing State enabling statutes, and the FCC rules and prior findings in this and related dockets support this approach.[3]

(3) *Impact of Federal Minimum List:* As recognized implicitly in the *UNE Remand Order's* specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that is appropriate for local market conditions. Consequently, the FCC should defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums. Assuming any new federal minimum removes one or more UNE from the national list or restricts availability of any UNE, such limitations should not apply in any State unless that State first determines that a competitor's access is "necessary" or whether lack of access "would impair" that competitor's ability to offer services, or is required as a matter of State rule or statute.[4]

(4) *Impact of Federal Action on UNE-P:* The FCC " . . .should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another." Specifically, the FCC should assure that its implementation of § 251 " does not favor one method of entry, at the expense of other methods of entry."[5]

(5) *Relationship to Federal Performance Standards:* FCC minimum unbundling standards should not rely upon any Federal UNE or Special Access standards.

---

3 See, *Implementation of the Local Competition Provisions, of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) ("*Remand Order*"). See also NARUC's February 2002 *Resolution Concerning the States' Ability to Add to the National Minimum List of Network Elements* ("[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC's national minimum.")

4 See, *NARUC December Letter* at 2 ("[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of [] evidence, that the requested relief is justified.")

5 See, *NARUC November 13, 2001 Resolution on the UNE-P Platform.*("[A]ny party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified.")

In support of these positions, NARUC states as follows:

I. INTRODUCTION

The National Association of Regulatory Utility Commissioners ("NARUC") is a quasi-governmental nonprofit organization founded in 1889. NARUC represents the government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the telecommunications common carriers within their respective borders. Both the United States Congress and federal courts have recognized that NARUC is a proper party to represent the collective interest of the State regulatory commissions.[6]

NARUC's member commissions regulate intrastate telecommunications services and particularly the local service supplied by incumbent local exchange carriers ("ILECs"), in the territories these ILECs serve. These commissions are obligated to ensure that local telephone service supplied by the ILECs is provided at just and reasonable rates.

They have a further interest to encourage the ILECs to take the steps necessary to allow unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying ILEC obligations to interconnect and provide nondiscriminatory access to competitors. See 47 U.S.C. § 252 (1996).[7]

---

6 See, e.g., 47 U.S.C. § 410 (1986), where Congress calls NARUC "the national organization of the State commissions" responsible for economic and safety regulation of the intrastate operation of carriers and utilities. Cf, 47 U.S.C. § 254 (1996). See also *USA v. Southern Motor Carrier Rate Conference, et al.*, 467 F.Supp. 471 (N.D. Ga. 1979), aff. 672 F.2d 469 (5th Cir. Unit "B" 1982); aff. en banc, 702 F.2d 532 (5th Cir. Unit "B" 1983, rev'd, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976).

7 *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. § 151 *et seq.*, Pub.L. No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) ("1996 Act" or "Act")

Historically, State Commissioners have always had oversight and enforcement responsibilities, pursuant to their individual State enabling statutes, of carrier-to-carrier unbundling/interconnection arrangements like those at issue in this proceeding. The FCC seeks comment in this proceeding on, *inter alia*, the proper roles of State commissions in the implementation of unbundling requirements for incumbent LECs, and on CompTel's proposal to convene a Federal-State Joint Conference on UNEs pursuant to section 410(b) of the Act.[8]

II. DISCUSSION

The FCC Should Immediately Convene a Federal-State Joint Conference.

In ¶ 76 of the *Notice*, the FCC "seeks comment on a proposal to convene a Federal State Joint Conference on UNEs pursuant to [§] 410(b)." Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, NARUC contends that, ***at a minimum***, the Commission should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory "necessary" and "impair" standards.

Section 410(b) authorizes the Commission to "confer with any State commission having regulatory jurisdiction with respect to carriers regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission." This grant of authority plainly covers the UNE regime and the forthcoming three-year UNE review. The Commission has convened such conferences in the past, most recently in 1999 with the establishment of a Joint Conference on Advanced Telecommunications Services.[9]

---

8 *Notice*, ¶¶ 75-76.

9 See *Federal-State Joint Conference on Advanced Telecommunications Services*, 14 FCC Rcd 17622 (1999); *see also* 47 C.F.R. Part 1, Appendix A.

NARUC believes a Joint Conference will promote the public interest because the State commissions have extensive experience that can enhance the FCC's ability to address this issue. The three-year review will depend critically upon comprehensive empirical information and an understanding of the regulatory and industry experience with the current UNE regime. These vary, sometimes significantly, from State to State and region to region. As a result, direct participation by State regulators through a Joint Conference is both appropriate and necessary.

Moreover, Congress gave State regulators a critical role in implementing the UNE regime. They arbitrate the UNE provisions in interconnection agreements, establish UNE prices, and formally and informally adjudicate UNE disputes between ILECs and competitive carriers.[10] As a result, State regulators' experiences and perspectives on the UNE regime are invaluable to any effort to determine which UNEs satisfy the "impair" standard in §251(d)(2). Additionally, *State regulators have direct knowledge of the critical role that correct UNE pricing pays in the development of competitive markets.* Indeed, given the Act's purpose to ensure that the UNE regime will promote competition for *local telecommunications services*, the direct involvement of State regulators with jurisdiction over such local services seems indispensable to any meaningful three-year UNE review.

Convening a Joint Conference will permit the FCC and State regulators to act in a coordinated and cooperative fashion without unduly delaying the completion of the review. Given the intensively fact- and State-specific nature of the issues that will be addressed in the three-year UNE review, it would be useful for the Joint Conference to prepare its own

---

10 In many States, ILECs have gained regulatory flexibility through State statutes that contemplate more robust competition than would result through application of national minimum standards. For instance, the Illinois Public Utility Act recently classified certain of Ameritech Illinois' small business services as competitive through a comprehensive amendment that also ensured that unbundled local switching (and other network elements) would be available to competitors to serve small businesses.

recommendations and to facilitate the independent submission by State regulators of written statements to the FCC on these critical issues. NARUC members will work hard to assure the JC process proceeds in an expeditious manner.

It is Imperative States Retain Authority To Impose Additional Unbundling Obligations On ILECs and that FCC Action In This Proceeding Does Not Undermine Existing And Future State Initiatives.

The FCC has acknowledged the significant role played by the States prior to enactment of the 1996 Act and the continuing role to be played by the States in implementing local competition in its August 1996 *Local Competition Order*:

> *Virtually every decision in this Report and Order borrows from decisions reached at the State level, and we expect this close association with and reliance on the States to continue in the future. We therefore encourage States to continue to pursue their own pro-competitive policies. Indeed, we hope and expect that this Report and Order will foster an interactive process by which a number of policies consistent with the 1996 Act are generated by the States.*[11]

Again, in ¶ 75 of the *Notice*, the FCC "...recognize[s] that State commissions may be more familiar than the [FCC] with the characteristics of markets and incumbent carriers within their jurisdictions, and that entry strategies my be more sophisticated in recognizing regional differences."

The national experiment with local competition is still under way, with the States continuing to supply the differentiation and creativity needed for the evolution of competition to continue. NARUC believes the FCC should assure that this Triennial Review proceeding does

---

11 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, para. 53 (1996) (*"Local Competition Order"*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3rd 1068 (8th Cir. 1997) and *Iowa Utilities Board v. FCC*, 120 F.3rd 753 (8th Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utilities Board*, 525 U.S. 366 (1999), *on remand, Iowa Utilities Board v. FCC*, 219 F.3rd 744 (8th Cir. 2000), *petitions for writ of certiorari granted, Verizon Communications, Inc. v. FCC*, 121 S. Ct. 877 (2001); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997), further reconsideration pending.

not disrupt this process. While national minimum standards provide a useful floor to the competitive experiment, that floor is no substitute for considered State actions promoting competition. State regulators have access to the detailed real-world information that is essential to reasoned decision-making on this issue, employ procedures (such as discovery and cross examination) that are most compatible with fact-finding and verification, and are in the best position to balance competitive policies with the regulatory/deregulatory framework that governs the ILECs operating within their jurisdictions.[12]

NARUC strongly supports State commission authority to impose unbundling requirements *that exceed those imposed by the FCC.* Time has shown that the States have been instrumental in fostering competition and accelerating the pace at which competitive carriers enter the telecommunications marketplace. We believe Congressional intent as outlined in the 1996 federal statute, existing State enabling statutes, and the FCC rules and prior findings in this and related dockets support that authority. We appreciate and concur with the previous FCC findings that §251(d)(3)[13] " . . .provides State commissions with the ability to establish

---

12 The FCC is charged with administering federal telecommunications law and policy on a uniform national basis. It is by definition and design removed from the local conditions that the Commission itself suggests in the *Notice* should inform any decisions reached regarding future UNE availability. The Commission specifically seeks comment on whether to adopt different rules based upon a variety of criteria, including physical location, customer type, and/or type of carrier providing service. However, the more granular the inquiry, the more dependent that inquiry is on the detailed factual data that is difficult to develop and impossible to verify in a 'notice and comment' proceeding.

13 Section 251(d)(3) provides in relevant part as follows: "[T]he Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part." 47 U.S.C. § 251(d)(3). Similarly, Section 261 provides that a state commission may "impose requirements . . . that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part." 47 U.S.C. §261(c).

additional unbundling obligations." [Citations to NARUC, NTIA, CLEC and several individual State commission comments supporting this view of § 251(d)(3) omitted.][14]

The Texas commission, the second to shepard an ILEC through the § 271 process, has already filed in this docket noting its belief that Texas "remain[s] in the best position to recognize the 'characteristics of markets and incumbent carriers within Texas, and the entry strategies that have worked best.[15] The Texas commission is not alone.[16] That commission, and a number of others, has taken Congress's instruction and the FCC's reading of § 251(d)(3) to

---

14 See, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) ("*Remand Order*").

15 The vast majority of exchange revenues are the responsibility of State regulators, not the FCC. Based on ARMIS data for 2000, 70% of the ILECs' regulated revenues are regulated by the States, with more than 90% of the ILECs' interstate revenues related to access service. There is a significant potential for harm if there is a disconnect between the degree of local competition in a State and the amount of retail price deregulation the ILEC enjoys in that State. Only the States are in the position to fully understand the interrelationship between retail price regulation and local competition and to guard against that outcome.

16 A FCC decision to take this approach is consistent not just with past State practice, but also open proceedings in several "bellwether" States. The Tennessee Regulatory Authority recently imposed ILEC obligations above the Federal minimum unbundling standards to (1) provide and maintain a line splitter for CLECs, and (2) to install, for CLEC use, dual-purpose line cards in the fiber-fed NGDLCs. See, *First Initial Order*, TRA Docket No. 00-00544, *In Re: Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123*, pages 25 & 42 (April 3, 2002). Similarly, the Wisconsin PSC, in its "Final Decision," WPSC Docket No.6720-TI-161, *Investigation Into Ameritech Wisconsin's Unbundled Network* (March 22, 2002), at page 80, imposes unbundling obligations on Ameritech's Project Pronto that exceed existing federal requirements. Other pending State initiatives include (1) Texas proceedings to consider if (a) CLECs are "impaired" without unrestricted access to a local switching UNE. *Petition of MCIMetro Access Transmission Services, LLC, Sage Telecom, Inc., Texas UNE Platform Coalition, McLeodUSA Telecom Services, Inc. and AT&T Communications of Texas, L.P. for Arbitration with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996*, Public Utility Commission of Texas, Docket No. 24542, (b) an impairment would exist without access to SBC's Operator Services and Directory Assistance UNEs, and (c) if ULS, OS and/or DA should be unbundled pursuant to *PURA* § 60.022 which gives the PUC authority to require unbundling (beyond federal minimums) of any network element that has "competitive merit" or is in the "public interest," (2) a New York negotiation where the future availability of the local switching UNE is being addressed. *Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon New York Inc. and to Investigate the Future Regulatory Framework*, CASE 01-C-1945, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, CASE 98-C-1357, New York Public Service Commission, and (3) a pending Illinois proceeding on the minimum State list of UNEs required by the Illinois Public Utility Act.

heart. For example, the Massachusetts Department of Telecommunications and Energy determined in 1996 that dark fiber was an essential part of Massachusetts local exchange service and added dark fiber to the unbundling obligations of the ILECs *before* the FCC imposed the same requirement.[17]

In ¶¶ 45-46 of the Notice, the FCC discusses with more specificity whether it should limit the availability of UNE-P when certain triggers are met. As suggested by the previous statements, NARUC believes the FCC should not constrain State authority to determine if "UNE-P" should be made available in particular markets. In partial anticipation of this proceeding, at our November 2001 Convention, NARUC passed a resolution that, *inter alia*, notes that "*[m]any State commissions have embraced UNE-P as a means to expand customer choice for mass market, residential and small business consumers, by undertaking policies that ensure access to the UNE-P*," and states that: "*State commissions should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another.*" A copy of that resolution is attached.

NARUC agrees with the Massachusetts and Texas commission's March 15, 2001 comment that maximum State flexibility with respect to a UNE-P requirement is warranted. Texas states at page 4 of its comments that in Texas CLECS have tended to "rely heavily on the UNE platform as an entry strategy," citing Shiman and Rosenworce, "Assessing the Effectiveness of Section 271 Five Years After the Telecommunications Act of 1996." Attachment A of the Texas comments suggests that UNE-P accounts for approximately 75

---

17 See, *Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 – Phase 3, at pages 42-50 (1996). Cf. Footnote 16, *supra*.

percent of the CLEC "lines" in New York[18] and Texas. The Massachusetts commission states at page 4 of its comments that the "MDTE has ruled on the availability of UNE-P in the past and should be able to revisit that ruling as market conditions warrant."[19]

NARUC urges the FCC to defer to State determinations of whether unbundling requirements in any State should collapse to the existing or new federal minimums. *Assuming any new federal minimum removes one or more UNE from the national list or restricts availability of any UNE, such limitations should not apply in any State unless that State first determines that a competitor's access is "necessary" or whether lack of access "would impair" that competitor's ability to offer services, or is required as a matter of State rule or statute.*

Finally, the necessary State flexibility could be undermined by the FCC's proposal that the federal minimum unbundling rules should somehow be conditioned on ILEC performance under federal performance standards. There is no relationship between good performance (an ILEC meets the performance standard for a particular UNE on a consistent basis) and whether a CLEC's ability to provide a service is "impaired" by lack of access to any UNE.

---

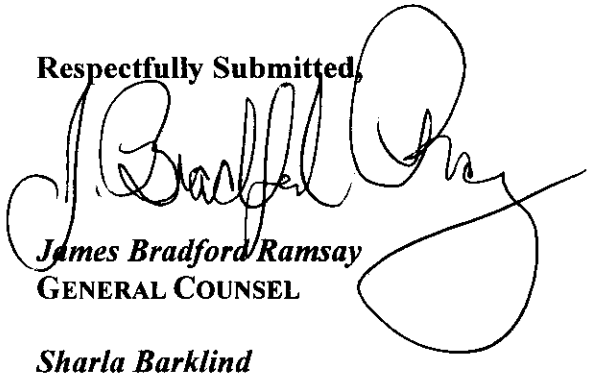
18 See, *Order Instituting Verizon Incentive Plan,* State of New York, Public Service Commission, Case 00-C-1945, Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework, Case 98-C-1357, Proceeding on Motion of the Commission to Examine New York Telephone Company's rates for Unbundled Network Elements, at page 7 ("For the term of the VIP, and regardless of any changes in its obligations under federal law, Verizon will make the UNE platform available to CLECs servicing small business customers...to CLECs serving residential customers.") . Compare, April 4, 2002 letter to FCC Chairman Powell from AT&T's Cicconi which said in the past six years AT&T has deployed more than 115 local telephone switches in more than 60 markets; re-engineered more than 200 long distance switches to provide local service; established over 1,000 collocations in ILEC switching offices; and installed over 17,000 route miles of local fiber directly connecting customers in about 6,000 buildings to its network. Contrary to the Bells' claim, said Cicconi, unbundling requirements have not hindered network investment by the ILECs or facilities deployment by the CLECs. The fact is that New York – the state with the greatest amount of unbundled network element platform (UNE-P)-based local competition – also enjoys enormous facilities-based competition, he said. He ends his letter by arguing that "[b]ecause the Bells know that the threat of competition is greater in states where UNE-P is available, they too invest more in states with high UNE-P entry (New York, Texas and Georgia)."

19 See, *Consolidated Arbitrations*, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 – Phase 4, at page 7 (2000).

CONCLUSION

The FCC and the State commissions have taken several significant steps toward deregulation of the local exchange carriers and increasing competition in telecommunications services and should work together to continue these efforts. For the foregoing reasons, NARUC respectfully requests the FCC immediately create a UNE Joint Conference to facilitate additional joint activity. In any case, it is imperative States retain authority to impose additional unbundling obligations on ILECs and that FCC action in this proceeding does not undermine existing and future State proceedings.

Respectfully Submitted,



James Bradford Ramsay
GENERAL COUNSEL

Sharla Barklind
ASSISTANT GENERAL COUNSEL

National Association of Regulatory Utility Commissioners
1101 Vermont Ave, NW Suite 200
Washington, D.C. 20005

202.898.2207

APRIL 5, 2002

APPENDIX A - NARUC RESOLUTIONS

Resolution Concerning the States' Ability to Add to the National Minimum List of Network Elements

WHEREAS, The States have traditionally provided the leadership needed to advance local competition and have evaluated a variety of approaches; *and*
WHEREAS, The Federal Communications Commission (FCC) has previously recognized the important contribution of State Commissions to local competition, expressing its intention to "...foster an interactive process by which a number of policies consistent with the 1996 Act are generated by the States" which may then be incorporated into national minimum requirements; *and*
WHEREAS, The FCC has initiated a triennial review of which network elements shall be included in the national minimum list of unbundled network elements ("UNEs") on a going-forward basis; *and*
WHEREAS, The level of local competition in each State is directly affected by which UNEs are available in that State; *and*
WHEREAS, The analysis to determine which network elements should be unbundled in a State is fact specific and must consider conditions in each particular State; *and*
WHEREAS, The State Commissions are in a better position to consider other factors, including the level of competition presumed by that State's system of retail price regulation; *and now therefore be it*
RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its February 2002 Winter Meetings in Washington, D.C., urges the FCC to recognize that States may continue to require additional unbundling to that required by the FCC's national minimum; *and be it further*
RESOLVED, That such additional unbundling is consistent with the purposes of the federal Telecommunications Act of 1996, and in accordance with State or federal law; *and be it further*
RESOLVED, That the NARUC General Counsel be directed to provide the FCC comments consistent with this resolution.

Sponsored by the Committee on Telecommunications.
Adopted by the NARUC Board of Directors February 13, 2002

Resolution Concerning The UNE Platform

WHEREAS, The vast majority of access lines in the United States - approximately 144 million out of 174 million total switched-lines - are provided to mass market residential and small business consumers of analog dial tone service, or "POTS"; and
WHEREAS, The 1996 Act provided for three separate methods of entry into local markets - CLEC-provided facilities, unbundled network elements and combinations thereof, and resale; and
WHEREAS, The Unbundled Network Element Platform, ("UNE-P") is a combination of unbundled network elements (loop, switching and transport) that entrants can use to provide consumers distinct local services not available via the resale method of entry; *and*
WHEREAS, The 1996 Act did not distinguish or prefer any one method of entry over any other method and recognizes that the construction of new, rival network facilities requires new entrants to incur substantial and risky fixed and sunk costs; *and*
WHEREAS, An environment in which all methods of competitive entry envisioned by the 1996 Act are possible would best and most rapidly provide significant public interest benefits for all types of consumers, including those mass market consumers who desire only access to analog POTS; *and*
WHEREAS, The decrease in the willingness of capital markets and manufacturers to finance the deployment of new and rival equipment, including switches, has led to greater reliance by new entrants on the "UNE-P" as a competitive entry strategy; *and*

WHEREAS, Many State commissions have embraced UNE-P as a means to expand customer choice for mass market, residential and small business consumers, by undertaking policies that ensure access to the UNE-P; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2001 113th Annual Convention in Philadelphia, Pennsylvania encourages State utility commissions to reassess their implementation of Section 251 of the 1996 Act to ensure that such implementation, including rates, terms and conditions available under interconnection agreements and State access regulations, does not favor one method of entry, at the expense of other methods of entry; *and be it further*

RESOLVED, That State commissions should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored over another; *and be it further*

RESOLVED, That State commissions should continue to take an active role in studying and ensuring that mass market, residential and small business consumers enjoy the benefits of the local competition promised to them by the 1996 Act, and that it is the interests of consumers, and not any particular industry participant or sector, that is of paramount concern to the public interest; *and be it further*

RESOLVED, That NARUC General Counsel be directed to provide the FCC comments consistent with this resolution.

Sponsored by the Committee on Telecommunications.
Recommended by the NARUC Board of Directors November 13, 2001.
Adopted in Convention November 14, 2001.